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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP OF )  
M.D.T. AND X.J., )

JENNIFER TURANO, )

Appellant-Respondent, )

vs. )

BARTHOLOMEW COUNTY DEPARTMENT )  
OF CHILD SERVICES, )

Appellee-Petitioner. )

No. 03A01-0610-JV-445

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APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT  
The Honorable Heather M. Mollo, Juvenile Referee  
Stephen R. Heimann, Judge  
Cause No. 03C01-0506-JT-1151

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**March 5, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

## **BAKER, Judge**

Appellant-respondent Jennifer Turano appeals from the involuntary termination of her parental rights with respect to her minor children, M.T. and X.J. Specifically, Turano argues that her due process rights were violated because the trial court waited nearly ten months after the fact-finding hearing before entering the termination order. Turano also claims that the evidence was insufficient to support the termination of her parental rights because appellee-petitioner Bartholomew County Department of Child Services (DCS) failed to show that the conditions resulting in the children's removal would not be remedied or that the continuation of the parent-child relationship posed a threat to the well-being of the children. Finding no error, we affirm the judgment of the trial court.

### FACTS

Turano is the mother of M.T., born January 19, 1993, and X.J., born December 17, 2002.<sup>1</sup> Both of the children were removed from Turano's home after Columbus Police Department officers uncovered a metamphetamine lab on the property on June 21, 2004. When the police arrived, they found X.J. asleep on the living room floor, which was adjacent to a room filled with methamphetamine smoke. As a result of this incident, Turano was arrested and charged with maintaining a common nuisance and neglect of a dependent. Consequently, the DCS filed a Child In Need of Services (CHINS) petition with regard to the

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<sup>1</sup> Turano is the mother of four other children, and she has permitted two of them to live with their father. Turano has no contact with those children. Turano voluntarily relinquished her parental rights to another child, and the fourth child was raised by the child's paternal grandmother. Appellant's Br. p. 50, 70-72.

children.

After X.J. and M.T. were taken into custody, the DCS learned that both children had previously been wards of the Pike County Department of Child Services (Pike County DFC). M.T. had been alleged to be a CHINS because of Turano's educational neglect. Specifically, during the 2002-2003 school year, M.T. missed more than seventy days of school. She had repeated the second grade twice and was going to be retained a third year. As a result, M.T. was declared a CHINS and made a ward of Pike County DFC on July 11, 2003. M.T. was initially allowed to remain in Turano's home while the CHINS action was pending. However, on October 23, 2003, Turano voluntarily placed both children in Pike County DFC because of her admitted drug abuse. Once M.T. was placed in foster care, she performed well in school. Eventually, on April 16, 2004, the CHINS petitions in Pike County were dismissed.

M.T. and X.J. were made wards of the DCS on October 20, 2004, after Turano admitted the allegations set forth in the CHINS petition. On November 1, 2004, Turano pleaded guilty to neglect of a dependent, a class D felony, and was subsequently sentenced to a three-year term of incarceration with all time suspended. Turano was also placed on probation for thirty months. However, after Turano was released from jail, she was incarcerated in Pike County from December 2-10, 2004, for violating her probation in Pike County.

After her release, Turano contacted Sherry Alyea, the case manager with the DCS.

Pursuant to a dispositional decree that the trial court had entered on October 20, 2004, Turano was ordered to cooperate with the DCS, participate in the development of case plans, maintain regular contact with her case manager, participate in a visitation plan with the children, obtain suitable housing and employment, and successfully complete a family counseling program. Turano was also ordered to obey all laws, and she was not allowed to use drugs or alcohol unless they were prescribed by a physician. Finally, Turano was to complete a substance abuse program and aftercare treatment.

At a status hearing on February 24, 2005, the trial court was advised that Turano had been dismissed from her drug treatment program before she had completed it. Turano also admitted that she was not attending group meetings and acknowledged that she was probably in violation of her probation. At a hearing on June 2, 2005, the trial court learned that Turano had failed to comply with the conditions of her probation and was facing revocation because she had missed too many appointments in the drug treatment program. While Turano's probation officer would have permitted her to re-enter the program after attending thirty alcoholics anonymous meetings, Turano attended only ten. It was also determined that Turano was terminated from a premarital counseling program because of her lack of commitment. Additionally, Turano submitted to a urine drug screen, and the results tested positive for methamphetamine use. Turano admitted that she was not meeting the minimum requirements for reunification with her children.

On June 27, 2005, the DCS filed a petition to terminate Turano's parental rights as to

X.J. and M.T.<sup>2</sup> Thereafter, on August 31, 2005, Turano was found to be in violation of probation. As a result, Turano was committed to the custody of the Department of Correction for a period of three years, with no time suspended. Turano's anticipated earliest possible release date was October 15, 2006. At the termination hearing that commenced on November 2, 2005, DCS case manager Alyea testified for the DCS, and seventeen exhibits were admitted into evidence without objection. It was determined that Turano had changed residences at least four times between December 2004 and the time of her incarceration in August 2005. At some point while Turano was pregnant with X.J., she was living in a bus that had no water or electricity. Id. at 33.

Following her release from jail in December 2004, Turano worked at a Crystal Flash Store for approximately three months until she either quit or was fired. Turano subsequently worked at a Kroger grocery store, but she was fired before her probationary period had expired. Also, between June 2, 2005, and June 13, 2005, Turano reported that she was working at two different places.

Turano testified at the termination hearing and her counsel read a statement to the trial court on Turano's behalf. Following the presentation of evidence, the trial court advised the parties that it required considerable time to review all of the evidence. Thereafter, on August 24, 2006—nearly ten months after the termination hearing—the trial court entered an order terminating Turano's parental rights as to M.T. and X.J. Turano now appeals.

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<sup>2</sup> The parties do not dispute that the children had been removed from Turano's care for more than six months pursuant to the October 20, 2004, dispositional decree as required by Indiana Code section 31-35-2-8.

## DISCUSSION AND DECISION

### I. Due Process Violation

Turano argues that the termination order must be set aside because her due process rights were violated. Specifically, Turano maintains that the trial court's decision to wait ten months before entering the termination order was unreasonable.

When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. J.T. v. Marion County Office of Family & Children, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000). Due process embodies the requirement of fundamental fairness. E.P. v. Marion County Office of Family & Children, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). The three factors to consider with regard to due process in termination matters are the private interests affected by the proceeding, the risk of error created by the State's chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure. A.P. v. Porter County Office of Family and Children, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000).

Indiana Trial Rule 53.2 provides that whenever a cause has been tried to the court and taken under advisement by the judge and the judge fails to determine any issue of law or fact within ninety days, the cause may be withdrawn from the trial judge and transferred to our Supreme Court for appointment of a special judge. The purpose of this rule is to expedite litigation. Weber v. Electrostatic Eng'g, 465 N.E.2d 1152, 1154 (Ind. Ct. App. 1984). However, this court has determined that if a party does not follow the procedure set forth in Trial Rule 53.2 and permits the case to proceed to final judgment, that party is estopped from

complaining that the original judge retained jurisdiction over the case. Phares v. State, 796 N.E.2d 305, 308 (Ind. Ct. App. 2003).

Here, Turano never filed a motion seeking an expedited ruling from the trial court. Rather, she waited until after an adverse judgment was rendered before complaining about the delay. Moreover, there was no stipulation or agreement by the parties reflected in the record that the provisions of Trial Rule 53.2 should not apply. Hence, the fact that the trial court stated that it might take considerable time to review the evidence did not serve to prevent Turano from pursuing a remedy under Trial Rule 53.2. Therefore, Turano is estopped from complaining about the trial court's delay in entering judgment and has waived the issue.

Waiver notwithstanding, we note that the petition to terminate Turano's parental rights as to the children was filed on June 21, 2005. Appellant's App. p. 1-4. The fact-finding hearing was held on November 2, 2005, at which time Turano was represented by counsel. Tr. p. 9. Turano was given the opportunity to cross-examine the witnesses testifying against her, and she also introduced her own evidence. Id. at 64-67. Although Turano contends that her rights were violated because the trial court had no knowledge of her present condition when the termination order was entered, it is well established that the trial court must look to the parent's fitness at the time of the termination hearing. Matter of L.V. N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Moreover, the trial court must examine the parent's pattern of conduct to determine whether there is substantial probability of future neglect or deprivation. Matter of A..N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). And it is proper for a trial

court to consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. In re D.G., 702 N.E.2d 777, 799 (Ind. 1998).

Here, the trial court's ruling was based on the facts as they existed on November 2, 2005, which complies with the standard provided by this court. See Matter of L.V.N., 799 N.E.2d at 69. What may have occurred some 300 days following the presentation of the evidence, or what may be Turano's present condition, is not to be considered by the trial court. Put another way, Turano's present circumstances are simply not relevant to the trial court's determination in the termination decision. Therefore, we conclude that Turano cannot successfully claim that her due process rights were violated merely because the trial court waited ten months after the termination hearing to make its ruling.

## II. Sufficiency of the Evidence

Turano also argues that the evidence was insufficient to support the termination order. Specifically, Turano contends that the evidence failed to show that the conditions resulting in the children's removal or the reasons for placement outside the home would not be remedied or that the continuation of the parent child relationship poses a threat to the well-being of the children.

In addressing Turano's claims, we first note that when reviewing termination of parental rights proceedings on appeal, this court neither reweighs the evidence nor judges the credibility of witnesses. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. In deference



to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

The involuntary termination of parental rights is the most extreme sanction that a court can impose. Id. Termination severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2). Thus, the State must prove:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six  
(6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal will be remedied, the trial court must judge the parent's fitness to care for his children at the time of the termination hearing. Matter of L.V.N., 799 N.E.2d at 69. A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the

interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). The best interests of the child are the ultimate concern in termination proceedings. That is, children should not suffer emotional or psychological harm or instability in order to preserve parental rights. In re L.S., 717 N.E.2d at 210.

In this case, the evidence established that Turano was incarcerated at the time of the termination hearing and was not expected to be released for nearly one year thereafter. Turano's conduct displayed a pattern of instability, drug abuse, and neglect of her children. As noted above, M.T. missed seventy days of school and was expected to repeat the second grade for the third time. Although M.T. was permitted to remain in Turano's home during the CHINS proceeding, Turano eventually requested the Pike County DFC to take custody of both children in October 2003 because of her persistent drug problems. Turano checked herself into a drug treatment facility, and although the children were returned to her in April 2004, she became involved with drugs again only two months later. Turano tested positive for drugs on a number of occasions, and methamphetamine was manufactured in her residence. Appellant's App. p. 55. Also, while Turano had been involved with a number of drug treatment programs, none of them proved successful.

Additionally, Turano was unable to maintain stable housing or employment. As noted above, the evidence showed that Turano lived in at least four different places from December 2004 until her incarceration in August 2005. After Turano was released from jail in

December 2004, she worked at a Crystal Flash Store for approximately three months until she either quit or was discharged. Id. at 53. Turano then worked at Kroger but was fired before her probationary period had expired. Id. Between June 2, 2005, and June 13, 2005, Turano reported that she had worked at two different places.

While Turano was offered a number of services through the Bartholomew County Probation Department to help her overcome her drug habit, she failed to complete the programs and tested positive for illegal drugs on February 9, 2005. Turano had also been dismissed from several drug programs as a result of her failure to participate in them. Id. Further, she failed to enroll in a group that had been developed specifically for methamphetamine users, even though her probation officer had recommended that she do so. In essence, the evidence established that Turano failed to take advantage of the services that were offered to her to overcome her addiction problems. Moreover, Turano had a lengthy criminal history with convictions in several counties. Id. at 112-14. She served jail time for her offenses and continued to have drug problems.

The evidence further established that Turano had a history of neglecting her children. In June 2002, Turano was found to be living in a bus with no water or electricity. Id. at 33. At the time, Turano was pregnant with X.J. Id. at 51. There were also complications during X.J.'s birth, due in part to Turano's late prenatal care. Id. at 52. It was also established that Turano had taken Valium and had smoked during her pregnancy with X.J. Urine screens conducted at the time of his birth showed evidence of opiates and other drugs in Turano's system. Id.

Neither of the children had been in Turano's home for significant periods of their lives. M.T. had been determined to be a CHINS on five different occasions. Id. at 96. Although Turano served jail time for drug offenses and attended some counseling sessions, she was unable to overcome her drug addictions. And she has been unable to maintain a stable residence or employment since at least 2004.

In considering the above and recognizing that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor, and judged their credibility, as a reviewing court, we give proper deference to the trial court. Hence, we conclude that the DCS presented clear and convincing evidence that Turano's parental rights should be terminated pursuant to Indiana Code section 31-35-2-4.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.